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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,179	01/12/2004	Sandra Parkington	47973.2.1	2086
22859 7590 04/13/2009 INTELLECTUAL PROPERTY GROUP FREDRIKSON & BYRON, P.A. 200 SOUTH SIXTH STREET, SUITE 4000 MINNEAPOLIS, MN 55402				
EXAMINER NAQI, SHARICK				
ART UNIT 3769		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/756,179

Applicant(s)

PARKINGTON, SANDRA

Examiner

SHARICK NAQI

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 10-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s) Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s) Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mault et al. US Patent Publication Number 2002/0133378.

1. A method for tracking sodium intake comprising the steps of:

a. determining an amount by weight, of a standard measurement system, of dietary sodium a subject is allowed to consume during an intake period, the amount being specific to a particular subject (Fig 3k shows Nutrient Target daily target for sodium set at 2400 mg, this is specific to the user using the device and accessing the user account using a password as shown in paragraph 0059);

b. converting the amount by weight of dietary sodium so determined into intake points by use of a preset ratio of the amount by weight of the standard measurement system to intake points, the conversion being performed by a processor and the preset ratio being programmable into the processor, (Fig-8C shows the daily Nutrient totals set up to be displayed as percentage points where 100% would be equal to 2400mg for Sodium);

c. selectively displaying on a display a conversion scale listing the relationship between multiple intake points and the corresponding amounts by

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weight of dietary sodium, the relationships displayed being based on the preset ratio, the display operatively connected to the processor (Fig -15 Meal Logging shows amount of sodium in the meal and the percentage, different foods have different amounts of sodium and different percentages, therefore the device shows the relationships between different sodium amounts and points).

d. determining the amount by weight of the standard measurement system of dietary sodium in a portion of food that will be consumed by the subject (Fig - 15 Meal Logging shows amount of sodium in the meal);

e. selectively entering into the processor the number of intake points associated with the portion of food that will be consumed or the amount by weight of the standard measurement system of dietary sodium in a portion of food that will be consumed, such entry into the processor of the number of intake points or amount by weight of dietary sodium being user-selectable (Fig -15 Meal Logging also shows percentage of daily value of sodium in the meal along with sodium amount so when a particular food is selected, the amount of sodium in the food is also selected)

f. converting the amount by weight of the standard measurement system of dietary sodium in the portion of food to be consumed to intake points by use of said preset ratio (Fig -15 Meal Logging also shows percentage of daily value of sodium in the meal);

g. maintaining a running sum of intake points which are equivalent to dietary sodium consumed by the subject during the intake period (Figure 8-C shows daily sodium intake total. Fig – 19A shows percentage of sodium

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consumption in chart that can be determined over any period of time, including a day if the start day and end day are set to be the same.).

h. displaying as an output the running sum of intake points on the display (Figure 8-C shows daily sodium intake total. Fig – 19A shows percentage of sodium consumption in chart that can be determined over any period of time, including a day if the start day and end day are set to be the same.).

Mault discloses that the preset ratio results in a total number of the intake points the subject is allowed to consume during an intake period that is three digits long (Fig-8C shows the daily Nutrient totals set up to be displayed as percentage points where 100% would be equal to 2400mg for Sodium). Mault does not explicitly show the present ratio resulting in a total number of the intake points the subject is allowed to consume during an intake period that is one or two digits long. It would have been an obvious matter of design choice to a person of ordinary skill in the art to use three digits instead of two digits because Applicant had not disclosed that using only two digits provides an advantage, is used for a particular purpose, or solved a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with three digits instead of two because sodium intake can still be presented to the user in point form as required by the invention.

2. The method of claim 1 including the further step of repeating steps a. to h. for successive intake periods (Fig -19A shows that the steps can be repeated

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every day).

3. The method of claim 2 includes the step of making each intake period a day (Figure 8-C shows daily sodium intake total. Fig – 19A shows percentage of sodium consumption in chart that can be determined over any period of time, including a single day if the start day and end day are set to be the same).

4. The method of claim 1 including the further steps of:

i. recording the weight of the subject at the beginning of each intake period (Fig 17 discloses recording actual and estimated weight values); and

j. recording the weight of the subject at least once per day (Fig 17 discloses recording actual and estimated weight values).

5. The method of claim 4 including the further steps of:

k. determining the change in weight between the weight recorded at the beginning of the intake period as compared to the weight taken at the beginning of the previous intake period (Paragraph 0071-0072. Changes in weight are compared);

l. determining if the change in weight exceeds a preset threshold amount (Paragraph 0071-0072. Determines if changes are less than predicted);

and

m. taking remedial action if the change of weight exceeds the threshold amount (Paragraph 0071-0072. If changes are less than predicted, interactive

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dialog is conducted, goals are modified or a dietician is allowed to set up new alerts, all these are equivalent to a remedial action).

6. The method of claim 5 wherein the step of taking remedial action is consulting with a health specialist (Paragraph 0071-0072. See explanation of claim 5).

7. The method of claim 1 wherein the standard measurement system used is selected from the group of the English system or the Metric system (The figures show that the Metric system is used).

8. The method of claim 1 wherein the standard measurement system is the Metric system (The figures show that the Metric system is used).

In regards to claim 9, at the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to set the preset ratio as 100 milligrams of sodium per one intake point because Applicant had not disclosed that this particular ratio provided an advantage, is used for a particular purpose, or solved a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with any preset ratio, including one where each point equals 240mg of sodium (100 percentage points is equal to total daily intake of 2400mg)

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because with this ratio, sodium intake can still be presented to the user in point form as required by the invention.

Response to Arguments

Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

It is the Examiner's position that the updated rejections presented in response to the amended claims address the arguments raised by the applicant. Please see details of the rejection above.

Applicant is invited to request an interview to discuss suggestions to overcome the applied prior art.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory

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action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHARICK NAQI whose telephone number is (571)272-3041. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry M. Johnson III can be reached on 571-272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/S. N./

Examiner, Art Unit 3769

/Michael C. Astorino/

Primary Examiner, Art Unit 3769

April 10, 2009